

STATE OF MICHIGAN  
COURT OF APPEALS

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CHARLES HAINES,

Plaintiff-Appellant,

v

DEPUTY DAVID LAMONTAINE, SGT. BRETT  
ORTOLANO, DEPUTY MATTHEW  
TORONGEAU, and COUNTY OF MONROE,

Defendants-Appellees.

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UNPUBLISHED  
February 23, 2006

No. 263935  
Monroe Circuit Court  
LC No. 04-018334-NO

Before: O'Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition to defendants. We affirm. This case arose when police received an anonymous phone call reporting that plaintiff, a campground manager, was violently assaulting his girlfriend. When police arrived, they searched the public areas of plaintiff's campground office with his consent, but plaintiff would not allow defendants to search his living area. They insisted, and he blocked the door with his body. They arrested him for obstructing the search, handcuffed him, and searched the remaining portions of his residence. Plaintiff claimed the arrest and search constituted intentional torts.

On appeal, plaintiff first claims that the trial court failed to view the evidence in a light most favorable to plaintiff. We disagree. The one statement plaintiff relies on was merely the trial court's explanation of why it thought defendants' search was reasonable. The court stated that it could envision a scenario in which plaintiff's girlfriend was severely injured inside plaintiff's residence, but the officers chose not to immediately search for her, so she later sued them for failing to take appropriate action under the circumstances. This peripheral observation by the court does not indicate that the trial court viewed the facts in defendants' favor or resolved any factual issues contrary to *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Rather, it merely illustrated why the court found the search reasonable. Therefore, plaintiff has not provided factual support for this argument.

Plaintiff next argues that, viewing the facts in the light most favorable to him, the officers arrested plaintiff for refusing to consent to a warrantless search. We disagree. We review de novo a trial court's decision to grant summary disposition. *Id.* at 118.

The undisputed facts indicate that at 2:20 in the morning on September 14, 2002, Monroe County 911 Dispatch received an anonymous telephone call that was traced to a coin operated telephone at the main office building at Camp Lord Willing. The call was recorded, and throughout the call a woman can be heard screaming in the background, and a man can be heard shouting. The parties each provided a copy of the recording to the trial court, which reflects the following conversation:

*DISPATCHER.* 911, Monroe County. Can I help you?

*CALLER.* Yes. I need an officer at Camp Lord Willing as quick as possible.

*DISPATCHER.* Okay. What's the problem?

*CALLER.* The owner, him and his girlfriend is fighting. He's beating the f\*\*\* out of her.

*DISPATCHER.* He is right now?

*CALLER.* Yes.

*DISPATCHER.* Is that him yelling in the background?

*CALLER.* Yes, it is.

*DISPATCHER.* Where is he at right now?

*CALLER.* Upstairs. I can't see them at all, but she's been screaming help, help.

*DISPATCHER.* Okay. What's your name?

*CALLER.* I'm not giving you my name.

*DISPATCHER.* Pardon me?

*CALLER.* I said I'm not giving you my name. I live here.

*DISPATCHER.* Is it an upstairs house on the site where they live?

*CALLER.* Yes. It's a building, an office building, they live in the upstairs.

*DISPATCHER.* Okay. We'll send help, all right? Does he have any weapons or anything?

*CALLER.* Yes. As far as I know, he still has a pistol.

*DISPATCHER.* He does have a pistol?

*CALLER.* Yeah.

*DISPATCHER.* Okay. Has he been drinking or anything?

*CALLER.* Yeah, he has.

*DISPATCHER.* Who is this man, what's his name?

*CALLER.* Chuck Haines.

*DISPATCHER.* Chuck Haines?

*CALLER.* Yes, he's the owner of the campground.

*DISPATCHER.* I can't hear you.

*CALLER.* He's the owner of the campground.

*DISPATCHER.* Okay. All right. We'll send someone out.

*CALLER.* Thank you.

*DISPATCHER.* All right.

The dispatcher radioed the address of the campground and its cross streets to patrol officers, explaining that there was a "domestic in progress." The dispatcher directed the officers to the "upstairs where the manager lives." According to the dispatcher, "it's the owner of that location assaulting his girlfriend." The dispatcher explained that the "caller refused to give his name. However, in the background you could hear subject assaulting a female. Be also advised that there may be a pistol inside that location." The dispatcher provided officers with plaintiff's name and explained that the caller believed plaintiff was intoxicated.

According to plaintiff's deposition, he was the president, caretaker, manager, and partial owner of Camp Lord Willing. On the night in question, plaintiff resided in the camp's office building with his girlfriend. Although the girlfriend later claimed that plaintiff assaulted her that night and that she sneaked out of plaintiff's residence when plaintiff saw police arrive, plaintiff testified that he went out that evening alone, and that he came home and was alone from 1:20 a.m. onward. Plaintiff stated that he went to bed at about 1:30, but awoke to some commotion downstairs and put on some pants to investigate. He testified that he checked the camp's laundry facility and public bathroom areas on the first floor, and then went outside, where he encountered some officers who told him they were investigating a domestic disturbance. Plaintiff told the officers who he was and told them that he had gotten up to check on a disturbance. Defendant Ortolano testified, without contradiction, that plaintiff described the disturbance as screaming. Plaintiff then led the officers around the public areas of the building's first floor, including the bathrooms and the laundry area.

At the end of a hallway containing clothes dryers was a plywood door to plaintiff's first-floor living room. The lead officer, identified by plaintiff only as "the sergeant," asked plaintiff what was behind the door and plaintiff responded that it was his residence. The sergeant asked

plaintiff if anybody was in there, and plaintiff told him no. The sergeant asked plaintiff if there had been a fight, and plaintiff denied it. According to plaintiff, the sergeant then asked him three times for his permission to enter and threatened to arrest him if he did not give it. However, plaintiff's deposition testimony also clarifies that the sergeant "demanded to go in and I told him he needed a search warrant. . . . And when I told him to get a search warrant, he told me if I didn't *let him in*, he was going to charge me with resisting and obstructing. And then he asked me *again* to give him permission to go in. And I told him he needed a search warrant." Emphasis added. Therefore, the operative words, according to plaintiff's deposition, were "let me in," not "grant me permission." Plaintiff does not dispute that he was standing in front of the door when he "refused" the sergeant's initial demand to enter and then repeatedly asserted that the sergeant needed a warrant. According to defendant Ortolano, "He stood in front of the door and wouldn't let us pass. I told him again to get out of the way or I was going to arrest him for obstruction. He still didn't."

According to plaintiff, defendant Lamontaine grabbed him after he demanded a search warrant the third time and pushed him into a nearby dryer, handcuffing and arresting him for resisting and obstructing an officer. Plaintiff did not dispute that he was standing in front of the door, blocking it, at the time of his arrest. After the arrest, officers went through the door and searched the residence, finding nothing.

Intentional torts by government employees are only immune from liability if the employees' actions were "justified." *VanVorous v Burmeister*, 262 Mich App 467, 480; 687 NW2d 132 (2004), citing *Brewer v Perrin*, 132 Mich App 520, 528; 349 NW2d 198 (1984). The legal standard for employee immunity was crystallized in the Supreme Court's *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 591; 363 NW2d 641 (1984), which extends immunity to individual employees and lower level officials when they are, "1) acting during the course of their employment and acting, or reasonably believe they are acting, within the scope of their authority; 2) acting in good faith; and 3) performing discretionary, as opposed to ministerial acts." Whether to make an immediate arrest falls within the discretion of an officer, so plaintiff must satisfy one of these elements to demonstrate a lack of immunity for his arrest. *Id.*, at 659-660. Moreover, "to prevail on a claim of false arrest or false imprisonment, the plaintiff must show that the arrest was not legal, i.e., that it was made without probable cause." *Tope v Howe*, 179 Mich App 91, 105; 445 NW2d 452 (1989). Also, the obstruction statute makes it illegal to obstruct an officer even if the officer is taking technically unlawful action, if the actions are done in the performance of the officer's official duties. See *People v Ventura*, 262 Mich App 370, 377; 686 NW2d 748 (2004); MCL 750.81d.

Although plaintiff asserts that the officers demanded his permission, the record reflects that they first demanded entry, and plaintiff "refused" and stood in front of the door. This obstruction of the officers provided defendants with probable cause, and therefore justification, to arrest plaintiff for obstruction, MCL 750.81d, and plaintiff has not contested the facts that underlie that justification. Plaintiff also fails to raise a genuine issue of fact that his failure to provide permission led to his arrest. Close review of plaintiff's testimony indicates that the sergeant used the phrase "let me in," which, in context, means "get out of my way" rather than "give me permission." "Plaintiffs cannot create an issue of fact by contradicting their own testimony." *Mitchell v Dougherty*, 249 Mich App 668, 680; 644 NW2d 391 (2002). Therefore, the undisputed facts would reasonably lead an officer to conclude that plaintiff was obstructing

the door, and plaintiff has failed to raise an issue of fact to refute defendant Ortolano's testimony in which he states, "That's the only reason we arrested him. He wouldn't move." Viewing the facts in the light most favorable to plaintiff, plaintiff failed to present a genuine issue of fact that the officers lacked probable cause to arrest him, or that his arrest was otherwise unjustified. *VanVorous, supra*. Further, he failed to present facts to refute that the officers reasonably believed that the arrest was within the scope of their authority and that they arrested him in good faith. *Ross, supra*. Therefore, the trial court did not err when it granted defendants' motion for summary disposition on plaintiff's false arrest and false imprisonment claims.

However, plaintiff also argues that the search was not lawful, so the officers acted outside their lawful duties and are liable for trespass. We disagree. Ordinarily, an officer may not enter a person's home without a warrant unless the officer has probable cause to believe that a crime has been committed and one of the exceptions to the warrant requirement applies. *People v Beuschlein*, 245 Mich App 744, 749; 630 NW2d 921 (2001). One of the exceptions, the exigent circumstances exception, only applies when "a crime was recently committed on the premises, and probable cause to believe that the premises contain evidence or perpetrators of the suspected crime." *In re Forfeiture of \$176,598*, 443 Mich 261, 271; 505 NW2d 201 (1993). "The police must further establish the existence of an actual emergency on the basis of specific and objective facts indicating that immediate action is necessary to (1) prevent the imminent destruction of evidence, (2) protect the police officers or others, or (3) prevent the escape of a suspect." *Id.* Therefore, if police officers have probable cause to believe an area holds evidence of recent criminal activity, and reason to believe immediate entry is necessary to protect the safety of others, then their search is justified even without a warrant.

Here, the officers had learned from the dispatcher that the assault was in progress at plaintiff's residence and that the dispatcher had heard a female screaming in the background. The call had been traced to the building that doubled as plaintiff's residence. They were also informed that the caller told the dispatcher that plaintiff had a pistol. Upon arrival, plaintiff told the officers his name, his occupation, and that he had heard screaming, all of which matched the phone call. Taken together with the information provided by the dispatcher, these facts provided probable cause to believe plaintiff had assaulted his girlfriend. They also reasonably indicated that the officers needed to act quickly to assist his girlfriend and protect her safety.

Nevertheless plaintiff argues that the officers searched his residence on the basis of an anonymous call, which never suffices to provide probable cause. Plaintiff relies on *Feathers v Aey*, 319 F3d 843, 849 (CA 6, 2003), which states, "Unlike known or identified informants, anonymous tipsters, without more, cannot be deemed reliable regarding their allegations." However, in this case, officers were led to plaintiff's residence by the fact that the call was traced to a pay phone on the premises. In the background, one can hear a woman screaming and a man shouting. Plaintiff identified himself to officers consistently with the caller's description and then he told them that he, too, had heard screaming. Therefore, the officers had much more than the allegations of an anonymous tipster to go on, and the rule from *Feathers* does not apply.

Plaintiff's remaining appellate issues were not raised before or addressed by the trial court, and we will not address them here. *Bowers v Bowers*, 216 Mich App 491, 498; 549 NW2d 592 (1996). However, we do note that plaintiff fails to present facts to contravene the officers' justification for their actions, and that his own summary disposition brief demonstrated ample familiarity with the factual and legal underpinnings of defendants' counter-motion.

Affirmed.

/s/ Peter D. O'Connell  
/s/ Michael R. Smolenski  
/s/ Michael J. Talbot